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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/815,159	03/31/2004	R. Scott Stephens	WEYE121926/25350	8194

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EXAMINER	
CORDRAY, DENNIS R	
ART UNIT	**PAPER NUMBER**
1731	

DATE MAILED: 12/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/815,159	STEPHENS ET AL.	
	Examiner	Art Unit	
	Dennis Cordray	1731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *14 November 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-14* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-14* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 1-3, 5-8 and 10-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Westland et al (6572919) in view of Neogi et al (US 2003/0208859) and further in view of Sprang et al (5571604).

Westland et al discloses crosslinked cellulosic fibers obtained by a method comprising: applying a crosslinking agent and a crosslinking catalyst to a web of fibers, separating the web into individualized fibers, and heating the individualized fibers to provide individualized crosslinked fibers (col 5 lines 41-45; col 6, lines 4-7 and 34-36). Westland also discloses the use of citric acid as a crosslinking agent (col 4, line 64 to col 5, line 2) and sodium hypophosphite as a crosslinking catalyst (col 6, lines 46-47). Westland further discloses that the fibers can be used to form absorbent products such as diapers, feminine care products, incontinence products and toweling (col 7, lines 11-17).

Westland does not disclose the use of a whitening agent.

Neogi et al teaches that consumer preference is for a whiter product and that the addition of small amounts of blue colorant to improve whiteness appearance is known in the art of papermaking (pars 2 & 4). Neogi also discloses the use of blue azo dyes

(such as Pergasol Blue PTD, which the instant disclosure teaches is a blue azo dye) as suitable colorants for whitening fluff pulp (par 28). Neogi does not teach that the blue dye is added to the formed web.

Sprang et al teaches that chemical additives, such as pigments, dyes or crosslinking agents, can be added to a fibrous web (col 7, lines 31-44).

The art of Westland et al, Neogi et al, Sprang et al and the instant invention are analogous in that they are from the art of making fibrous absorbents. It would have been obvious at the time the invention was made to a person with ordinary skill in the art to add a blue azo dye to the formed web to increase whiteness of the fibrous product in the process of Westland et al in view of Neogi et al and further in view of Sprang et al to make the product more preferable to customers.

3. Claims 4 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Westland et al, Neogi et al and Sprang et al, as applied to claims 1-3 and 5-8 above, and further in view of von der Eltz et al (5512064).

Westland et al, Neogi et al and Sprang et al do not disclose the use of an azo metal complex dye as a blue dye.

Von der Eltz et al teach that azo dyes and azo metal complex dyes are well known art and are completely familiar to one skilled in the art (col 5, lines 10-19). In the absence of limiting parameters not revealed in the current disclosure it would have been obvious at the time the invention was made to a person with ordinary skill in the art to add a blue azo metal complex dye as one of many possible choices to the formed web to increase whiteness of the fibrous product in the process of Westland et al in view of

Neogi et al and Sprang et al and further in view of von der Eltz et al to make the product more preferable to customers.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 1-14 provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 3-6, 9-14 and 17-19 of copending Application No. 10/813957.

Although the conflicting claims are not identical, they are not patentably distinct from each other because the instant invention fully encompasses the referenced claims of the copending application.

- Claim 1 of the instant invention is drawn to a product, whitened crosslinked cellulosic fibers, and does not preclude the use of a bleaching agent as claimed in Claim 1 of the copending application. Claim 1 of the copending application is also drawn to a product, whitened crosslinked cellulosic fibers.

- Claims 2-5 of the instant invention read the same as claims 3-6 of the copending application after appropriate changes in the referenced claim numbers.
- Claim 6 of the instant invention does not preclude the use of a bleaching agent as specified in Claim 9 of the copending application and, other than the additional step of applying a bleaching agent, the claims read identically.
- Claims 7-11 of the instant application read the same as Claims 10-14 of the copending application after appropriate changes in the referenced claim numbers.
- Claims 12-14 of the instant application read identically to Claims 17-19 of the copending application after appropriate changes in the referenced claim numbers.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Response to Arguments

Applicants' arguments filed 14 November, 2005 have been fully considered but they are not persuasive. The reasons are as follows:

Rejection of Claims Under 35 U.S.C. §103(a)

Applicants have argued that the Neogi reference cannot be used as prior art against the instant application pursuant to 35 U.S.C. §103(c)(1) because it is a §102(e) reference with respect to the present application and, like the present application, is assigned to Weyerhaeuser Company. However, the Neogi reference is a valid reference under 35 U.S.C. §102(a) and thus can still be used in a rejection under 35 U.S.C. §103(a).

Applicants argue in the last paragraph of page 4 which continues onto page 5 that, "...there is no motivation to combine the colorant described in the Sprang et al. reference with the crosslinking process described in the Westland et al. reference. The Westland et al. reference fails to suggest or provide any motivation to further color fibers produced by that method to improve their brightness."

Westland et al discloses that other pretreatments or post-treatments (to crosslinked fibers) that can be used to modify the fibers include the use of dyes or pigments (col 3, lines 16-25).

Applicants have also argued on page 5 in the same paragraph referenced above that, "... the Sprang et al. reference merely notes that fibrous webs can be subject to chemical post-treatment and that a variety of chemicals (e.g., dyes and pigments, among others) can be used to impart or enhance desirable properties. The Sprang et al. reference provides no suggestion or motivation to color crosslinked fibers."

Sprang et al discloses that crosslinking agents may be added to the pulp mixture (col 6, lines 51-52) and that the post-treatment imparts desirable properties to the composite (col 7, lines 31-33). Since both references envision applying dyes or pigments to crosslinked fibers, a person of ordinary skill in the art would be motivated to combine the teachings to improve the whiteness of the product.

Applicants argue that the von der Eltz reference relates to textiles and fabrics and fails to relate to the instant invention. The von der Eltz reference merely indicates that azo metal complex dyes are fiber reactive and are completely familiar to one skilled in the art (col 5, lines 10-19). As a well known class of dyes, it would be obvious to one

skilled in the art to use an azo metal complex dye for a blue dye as a functional equivalent.

With regard to the provisional obviousness-type double patenting rejection, applicants' intention to file a terminal disclaimer on the Examiner's indication of allowable subject matter is noted.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dennis Cordray whose telephone number is 571-272-8244. The examiner can normally be reached on M - F, 7:30 -4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven Griffin can be reached on 571-272-1189. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DRC

SEAN VINCENT
PRIMARY EXAMINER